



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

SENATE BILL NO. 74

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adles

1 AN ACT relating to developed properties.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 39A.280 is amended to read as follows:

4 (1) Disaster and emergency response functions provided by a state or local emergency
5 management agency, or any emergency management agency-supervised operating
6 units or personnel officially affiliated with a local disaster and emergency services
7 organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the
8 making of a promise, or the undertaking of a special duty, towards any person for
9 the services, or any particular level of, or manner of providing, the services; nor
10 shall the provision of or failure to provide these services be deemed to create a
11 special relationship or duty towards any person upon which an action in negligence
12 or other tort might be founded. Specifically:

13 (a) The failure to respond to a disaster or other emergency, or to undertake
14 particular inspections or types of inspections, or to maintain any particular
15 level of personnel, equipment, or facilities, shall not be a breach of any duty to
16 persons affected by any disaster or other emergency.

17 (b) When a state or local emergency management agency, or local emergency
18 management agency-supervised operating unit officially affiliated with a local
19 disaster and emergency services organization, does undertake to respond to a
20 disaster or other emergency, the failure to provide the same level or manner of
21 service, or equivalent availability or allocation of resources as may or could be
22 provided, shall not be a breach of any duty to persons affected by that disaster
23 or other emergency.

24 (c) A state or local emergency management agency, or local emergency
25 management agency-supervised operating unit officially affiliated with a local
26 disaster and emergency services organization shall not have or assume any
27 duty towards any person to adopt, use, or avoid any particular strategy or

1 tactic in responding to a disaster or other emergency.

2 (d) A state or local emergency management agency, or local emergency
3 management agency-supervised operating unit officially affiliated with a local
4 disaster and emergency services organization, in undertaking disaster and
5 emergency preparedness or prevention activities including inspections, or in
6 undertaking to respond to a disaster or other emergency, shall not have
7 voluntarily assumed any special duty with respect to any risks which were not
8 created or caused by it, nor with respect to any risks which might have existed
9 even in the absence of that activity or response, nor shall any person have a
10 right to rely on such an assumption of duty.

11 (2) Neither the state nor any political subdivision of the state, nor the agents or
12 representatives of the state or any of its political subdivisions, shall be liable for
13 personal injury or property damage sustained by any person appointed or acting as a
14 volunteer emergency management agency member, or disaster and emergency
15 services member, or disaster and emergency response worker, or member of any
16 agency engaged in any emergency management or disaster and emergency services
17 or disaster and emergency response activity. The immunity provided by this
18 subsection shall not apply to the extent that the state, a political subdivision of the
19 state, or a person or organization maintains liability insurance or self-insurance for
20 an act or omission covered by this subsection. To the extent that the state, a political
21 subdivision of the state, or a person or an organization maintains liability insurance
22 or self-insurance, sovereign immunity shall not be claimed with regard to an act or
23 omission covered by this subsection. This immunity shall not affect the right of any
24 person to receive benefits or compensation to which the person might otherwise be
25 entitled under the Workers' Compensation Law, or this chapter, or any pension law,
26 or any Act of Congress.

27 (3) Subject to subsection (6) of this section, neither the state nor any political

1 subdivision of the state nor, except in cases of willful misconduct, gross negligence,
2 or bad faith, the employees, agents, or representatives of the state or any of its
3 political divisions, nor any volunteer or auxiliary emergency management agency or
4 disaster and emergency services organization member or disaster and emergency
5 response worker or member of any agency engaged in any emergency management
6 or disaster and emergency services or disaster and emergency response activity,
7 complying with or reasonably attempting to comply with this chapter or any order
8 or administrative regulation promulgated pursuant to the provisions of this chapter,
9 or other precautionary measures enacted by any city of the state, shall be liable for
10 the death of or injury to persons, or for damage to property, as a result of that
11 activity. The immunity provided by this subsection shall not apply to the extent that
12 the state, a political subdivision of the state, or a person or organization maintains
13 liability insurance or self-insurance for an act or omission covered by this
14 subsection. To the extent that the state, a political subdivision of the state, or a
15 person or an organization maintains liability insurance or self-insurance, sovereign
16 immunity shall not be claimed with regard to an act or omission covered by this
17 subsection.

- 18 (4) Decisions of the director, his subordinates or employees, a local emergency
19 management director, or the local director's subordinates or employees, a rescue
20 chief or the chief's subordinates, concerning the allocation and assignment of
21 personnel and equipment, and the strategies and tactics used, shall be the exercise of
22 a discretionary, policy function for which neither the officer nor the state, county,
23 urban-county, charter county, or city, or local emergency management agency-
24 supervised operating unit formally affiliated with a local disaster and emergency
25 services organization, shall be held liable in the absence of malice or bad faith, even
26 when those decisions are made rapidly in response to the exigencies of an
27 emergency.

- 1 (5) Any person owning or controlling real estate or other premises who voluntarily and
2 without compensation grants a license or privilege, or otherwise permits the
3 designation or use of the whole or any part of the real estate or premises for the
4 purpose of sheltering persons during an actual, impending, mock, or practice
5 disaster or emergency, together with his or her successors in interest, shall not be
6 civilly liable for negligently causing the death of, or injury to, any person on or
7 about the real estate or premises for loss of, or damage to, the property of that
8 person. The immunity provided by this subsection shall not apply to the extent that
9 the state, a political subdivision of the state, or a person or organization maintains
10 liability insurance or self-insurance for an act or omission covered by this
11 subsection. To the extent that the state, a political subdivision of the state, or a
12 person or organization maintains liability insurance or self-insurance, sovereign
13 immunity shall not be claimed with regard to an act or omission covered by this
14 subsection.
- 15 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and
16 emergency response worker only if the volunteer or worker is enrolled or registered
17 with a local disaster and emergency services organization or with the division in
18 accordance with the division's administrative regulations.
- 19 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary
20 disaster and emergency response workers enrolled or registered with a local disaster
21 and emergency service organization or with the division in accordance with
22 subsection (6) of this section shall have the same degree of responsibility for their
23 actions and enjoy the same immunities as officers and employees of the state and its
24 political subdivisions performing similar work, including the provisions of KRS
25 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of
26 any civil action brought against a volunteer enrolled or registered with a local
27 disaster or emergency service organization or with the division due to an act or

omission made in the scope and course of a disaster and emergency response activity.

(8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed professional engineer as defined in KRS 322.010 or an architect licensed under KRS Chapter 323, who voluntarily and without compensation provides architectural, structural, electrical, mechanical, or other professional services at the scene of a declared emergency, disaster, or catastrophe, shall not be liable for any personal injury, wrongful death, property damage, or other loss of any nature related to the licensed professional engineer's or licensed architect's acts, errors, or omissions in the performance of the services carried out:

1. At the request of or with the approval of a federal, state, or local:

a. Emergency management agency official with executive responsibility in the jurisdiction to coordinate disaster and emergency response activity;

b. Fire chief or his or her designee; or

c. Building inspection official;

who the licensed professional engineer or licensed architect believes to be acting in an official capacity;

2. Within ninety (90) days following the end of the period for the declared emergency, disaster, or catastrophe, unless extended by the Governor under KRS 39A.100; and

3. If the professional services arose out of the declared emergency, disaster, or catastrophe and if the licensed professional engineer or licensed architect acted as an ordinary reasonably prudent member of the profession would have acted under the same or similar circumstances.

1 **(b) Nothing in this subsection shall provide immunity for wanton, willful, or**
 2 **intentional misconduct.**

3 ➔Section 2. KRS 154.26-010 is amended to read as follows:

4 As used in this subchapter, unless the context clearly indicates otherwise:

5 (1) "Agreement" means a revitalization agreement entered into, pursuant to KRS
 6 154.26-090, on behalf of the authority and an approved company with respect to an
 7 economic revitalization project;

8 (2) "Agribusiness" means any activity involving the processing of raw agricultural
 9 products, including timber, or the providing of value-added functions with regard to
 10 raw agricultural products;

11 (3) "Appropriation agreement" means an agreement entered into, pursuant to KRS
 12 154.26-090(1)(f)2., among the approved company, the authority, and local
 13 governmental entities with respect to appropriations by these local governmental
 14 entities for the benefit of the approved company;

15 (4) "Approved company" means any eligible company approved by the authority
 16 pursuant to KRS 154.26-080 requiring an economic revitalization project;

17 (5) "Approved costs" means:

18 (a) Obligations incurred for labor and to vendors, contractors, subcontractors,
 19 builders, suppliers, deliverymen, and materialmen in connection with the
 20 acquisition, construction, equipping, rehabilitation, and installation of an
 21 economic revitalization project;

22 (b) The cost of contract bonds and of insurance of all kinds that may be required
 23 or necessary during the course of acquisition, construction, equipping,
 24 rehabilitation, and installation of an economic revitalization project which is
 25 not paid by the vendor, supplier, deliveryman, contractor, or otherwise
 26 provided;

27 (c) All costs of architectural and engineering services, including estimates, plans

- 1 and specifications, preliminary investigations, and supervision of construction,
2 rehabilitation and installation, as well as for the performance of all the duties
3 required by or consequent upon the acquisition, construction, equipping,
4 rehabilitation, and installation of an economic revitalization project;
- 5 (d) All costs required to be paid under the terms of any contract for the
6 acquisition, construction, equipping, rehabilitation, and installation of an
7 economic revitalization project;
- 8 (e) All costs required for the installation of utilities, including but not limited to
9 water, sewer, sewer treatment, gas, electricity, communications, and railroads,
10 and including off-site construction of the facilities paid for by the approved
11 company; and
- 12 (f) All other costs comparable with those described above;
- 13 (6) "Assessment" means the job revitalization assessment fee authorized by KRS
14 154.26-100;
- 15 (7) "Authority" means the Kentucky Economic Development Finance Authority created
16 by KRS 154.20-010;
- 17 (8) "Commonwealth" means the Commonwealth of Kentucky;
- 18 (9) "Economic revitalization project" or "project":
19 (a) Means the acquisition, construction, equipping, and rehabilitation of
20 machinery and equipment, constituting fixtures or otherwise, and with respect
21 thereto, the construction, rehabilitation, and installation of improvements of
22 facilities necessary or desirable for the acquisition, construction, installation,
23 and rehabilitation of the machinery and equipment, including surveys;
24 installation of utilities, including water, sewer, sewage treatment, gas,
25 electricity, communications, and similar facilities; and off-site construction of
26 utility extensions to the boundaries of the real estate on which the facilities are
27 located, all of which are utilized to improve the economic situation of the

1 approved company to allow the approved company to remain in operation and
 2 retain or create jobs or to resume operations in the case of closed facilities as
 3 provided in subsection (10)(b) of this section; and

4 (b) Includes any supplemental project;

5 (10) "Eligible company" means any corporation, limited liability company, partnership,
 6 limited partnership, sole proprietorship, business trust, or any other entity:

7 (a) Employing or intending to employ full-time a minimum of twenty-five (25)
 8 persons engaged in manufacturing or agribusiness operations at the same
 9 facility, whether acquired, owned, or leased, located and operating within the
 10 Commonwealth on a permanent basis for a reasonable period of time
 11 preceding the request for approval by the authority of an economic
 12 revitalization project, including facilities where manufacturing or agribusiness
 13 operations has been temporarily suspended and which meets the standards
 14 promulgated by the authority pursuant to KRS 154.26-080; or

15 (b) Having or, in the case of closed facilities, intending, raw production of at least
 16 three (3) million tons of coal mined from the economic revitalization project
 17 facility and employing or, in the case of closed facilities, intending to employ,
 18 a minimum of five hundred (500) persons engaged in coal mining and
 19 processing operations at facilities, whether owned or leased, located and
 20 operating within the Commonwealth on a permanent basis for a reasonable
 21 period of time preceding the request for approval by the authority of an
 22 economic revitalization project, including facilities on or adjacent to where
 23 coal mining and processing operations have been closed, temporarily
 24 suspended, or severely reduced, and which meets the standards promulgated
 25 by the authority under KRS 154.26-080;

26 (11) "Final approval" means the action taken by the authority authorizing the eligible
 27 company to receive inducements under this subchapter;

- 1 (12) "Inducements" means the Kentucky tax credit and the job revitalization assessment
 2 fee as prescribed in KRS 154.26-090 and 154.26-100;
- 3 (13) "Manufacturing" means any activity involving the manufacturing, processing,
 4 assembling, or production of any property, including the processing that results in a
 5 change in the condition of the property and any related activity or function, together
 6 with the storage, warehousing, distribution, and related office facilities;
- 7 (14) "Coal mining and processing" means activities resulting in the eligible company
 8 being subject to the tax imposed by KRS Chapter 143;
- 9 (15) "Preliminary approval" means the action taken by the authority conditioning final
 10 approval by the authority upon satisfaction by the eligible company of the
 11 requirements under this subchapter;
- 12 (16) "State agency" means any state administrative body, agency, department, or division
 13 as defined in KRS 42.010, or any board, commission, institution, or division
 14 exercising any function of the state which is not an independent municipal
 15 corporation or political subdivision;
- 16 (17) "Supplemental project" means an additional investment in an approved economic
 17 revitalization project proposed during, or within twenty-four (24) months after the
 18 expiration of, the initial term of an agreement~~[a previously approved economic~~
 19 ~~revitalization project by a supplemental project eligible company, which may be~~
 20 ~~included in the revitalization agreement by way of amendment]~~, and which may be
 21 approved by the authority for additional~~[result in increased]~~ inducements~~[and an~~
 22 ~~extension of the original project term]~~ as set forth in KRS 154.26-090;
- 23 (18) ~~["Supplemental project eligible company" means an approved company that:~~
 24 ~~(a) Has expended approved costs of at least fifty million dollars (\$50,000,000) on~~
 25 ~~an existing approved economic revitalization project; and~~
 26 ~~(b) Employs a minimum of seven hundred fifty (750) employees at the site of the~~
 27 ~~economic revitalization project;~~

(19) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; ~~and~~

~~(19)~~(20) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(20) "Supplemental project agreement" means an agreement, entered into pursuant to Section 4 of this Act, on behalf of the authority and an approved company with respect to a supplemental project.

➔Section 3. KRS 154.26-080 is amended to read as follows:

(1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(2) The criteria for approval of eligible companies and economic revitalization projects or supplemental projects shall include but not be limited to the:

(a) Need for the project;

(b) New capital investment in the project or supplemental project that will result in financial stability for the manufacturing or coal mining and processing facility; and

(c) Retention or expansion of the greatest number of employees at the manufacturing or coal mining and processing facility.

(3) With respect to each eligible company ~~or supplemental project eligible company~~ making an application to the authority for inducements, and with respect to the project ~~or supplemental project~~ described in the application, the authority shall make inquiries and request materials of the applicant, including but not limited to written evidence that except for a substantial investment in the project ~~or supplemental project~~, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will:

(a) Close its manufacturing or coal mining and processing facility; and

- 1 (b) Permanently lay off its employees and cease operations; or
- 2 (c) Not resume operations of a closed facility as permitted by KRS 154.26-
- 3 010(9).
- 4 (4) The eligible company~~[or supplemental project eligible company]~~ shall, in a manner
- 5 acceptable to the authority, detail the condition of the facility, including but not
- 6 limited to financial, efficiency, and productivity matters; explain in detail why the
- 7 company intends to close the facility or not resume operations of the facility as
- 8 permitted by KRS 154.26-010(9); and set out alternatives that are available to the
- 9 company.
- 10 (5) As a part of its application, an eligible company as described in KRS 154.26-
- 11 010(10)(b) may request an emergency declaration based upon the urgency of the
- 12 request and its impact on the local or regional economy.
- 13 (6) A request for an emergency declaration shall be reviewed by the secretary of the
- 14 Cabinet for Economic Development, the secretary of the Education and Workforce
- 15 Development Cabinet, and the secretary of the Finance and Administration Cabinet
- 16 and their findings in connection with the emergency declaration shall be delivered
- 17 to the authority.
- 18 (7) If the emergency declaration is granted in accordance with subsection (6) of this
- 19 section, the eligible company shall not be subject to the requirements contained in
- 20 subsection (8), (9), or (11) of this section.
- 21 (8) In accordance with, and after the adoption of a resolution under subsection (10) of
- 22 this section, the authority shall engage the services of a competent consulting firm
- 23 or technical resource to analyze the data made available by the company, and to
- 24 collect and analyze additional information necessary to determine that, in the
- 25 independent judgment of the consultant, the company will close the facility or not
- 26 resume operations of the facility as permitted by KRS 154.26-010(9) absent a
- 27 substantial investment in the project, assisted by the inducements authorized by

- 1 KRS 154.26-015 to 154.26-100. The company shall pay the cost of this evaluation.
- 2 (9) The company shall cooperate with the consultant and provide all of the data which
 3 could reasonably be required by the consultant to make a fair assessment of the
 4 company's intentions to close the facility or not resume operations of the facility as
 5 permitted by KRS 154.26-010(9).
- 6 (10) After a review of relevant materials and completion of inquiries, the authority may,
 7 by resolution, give its preliminary approval by designating an eligible company as a
 8 preliminarily-approved company and authorizing the undertaking of the economic
 9 revitalization project.
- 10 (11) The authority shall review the report of the consultant and other information which
 11 has been made available to it in order to assist the authority in determining whether
 12 the company intends to close the facility for valid reasons or whether it intends or is
 13 able to resume operations of the facility in accordance with the requirements of
 14 KRS 154.26-010(10)(b) if inducements are granted. The authority shall determine
 15 the potential of the proposed revitalization project to make the facility stable,
 16 productive, and competitive in its market.
- 17 (12) After the review of the consultant's report or if an emergency declaration has been
 18 issued in accordance with subsection (6) of this section, the authority shall hold a
 19 public hearing to solicit public comment from any person, group, or interested party
 20 regarding the proposed project.
- 21 (13) After the public hearing, the authority, by resolution, may:
- 22 (a) Declare the jobs then existing at the facility to be lost or the company unable
 23 to resume operations as permitted by KRS 154.26-010(9);
- 24 (b) Give its final approval to the eligible company's application for a project; and
- 25 (c) Grant to the eligible company the status of an approved company.
- 26 The decision reached by the authority shall be final and no appeal shall be granted.
- 27 (14) (a) During the initial term of ~~an~~[a revitalization] agreement, or within twenty-

four (24) months after the expiration of the term, an[a supplemental project]
 eligible company may apply for, and the authority may approve, a
 supplemental project when the applicant:

1. Has expended approved costs of at least fifty million dollars
(\$50,000,000) on an approved economic revitalization project;

2. Employs a minimum of seven hundred fifty (750) employees at the site
of the economic revitalization project;

3. Agrees to incur at least ten million dollars (\$10,000,000) in additional
eligible costs for improvements to a blast furnace that is located at the
economic revitalization project, and that has burned at least one
million (1,000,000) tons of Kentucky coal during the initial term of the
agreement; and

4. Is at risk of closure and carries a significant net loss carry forward for
the last three (3) tax years as certified by the approved company.

(b) ~~[In reviewing an application submitted by a supplemental project-eligible~~
~~company, the authority may waive the requirements of subsections (8), (9),~~
~~(10), (11), (12), and (13) of this section if:~~

~~1. The authority receives from the eligible company a signed application~~
~~attesting that the company will close its facility without the~~
~~supplemental project assisted by the inducements authorized by this~~
~~subchapter; and~~

~~2. The authority determines that it has sufficient information from the~~
~~original project application and additional information provided through~~
~~submission of the supplemental project application to approve the~~
~~supplemental project.~~

(e) ~~—~~The authority may~~[shall]~~ approve a supplemental project by resolution,
 authorizing the execution of a supplemental~~[an amended]~~ project agreement.[

1 The adjustment to the initial project shall be made on the total approved costs,
 2 and any credits taken prior to the addition of a supplemental project shall then
 3 be subtracted from the increased amount of approved costs.]

4 (15) All meetings of the authority shall be held in accordance with KRS 61.805 to
 5 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its
 6 meetings to discuss matters exempt from the open meetings law and pertaining to
 7 an eligible company.

8 ➔Section 4. KRS 154.26-090 is amended to read as follows:

9 (1) The authority, upon adoption of its final approval, may enter into, with any
 10 approved company, an agreement with respect to its project or a supplemental
 11 project[an amended] agreement with respect to its[original and] supplemental
 12 project. The terms and provisions of each agreement and supplemental project
 13 agreement, including the amount of approved costs and any limitations the
 14 authority may deem necessary, shall be determined by negotiations between the
 15 authority and the approved company, except that each agreement and supplemental
 16 project agreement shall include the following provisions:

17 (a) The amount the approved company may recover through inducements under
 18 this subchapter shall not exceed seventy-five percent (75%) of approved costs.

19 (b) The[agreement shall set a] date by which the approved company will have
 20 completed the original project and supplemental project. Within three (3)
 21 months of the completion date of the original project or supplemental project,
 22 the approved company shall document the actual cost of the project or
 23 supplemental project in a manner acceptable to the authority. The authority
 24 may employ an independent consultant or utilize technical resources to verify
 25 the cost of the project or supplemental project. The approved company shall
 26 reimburse the authority for the cost of the consultant.

27 (c) In consideration of the execution of the agreement or supplemental project

1 agreement, the approved company may be permitted, during a period not to
 2 exceed ten (10) years commencing on the date of the agreement or
 3 supplemental project agreement and during which the agreement or
 4 supplemental project agreement is in effect, ~~and including any extension of~~
 5 ~~the ten (10)-year period negotiated as part of an amended agreement including~~
 6 ~~a supplemental project~~, the following inducements:

7 1. A credit against the Kentucky tax imposed by KRS 141.020 or 141.040
 8 on the income of the approved company generated by or arising out of
 9 the economic revitalization project or supplemental project, and a credit
 10 against the limited liability entity tax imposed by KRS 141.0401 on
 11 Kentucky gross profits or Kentucky gross receipts as determined under
 12 KRS 141.403. The ordering of credits shall be as provided in KRS
 13 141.0205; and

14 2. The aggregate assessment withheld by the approved company in each
 15 year.

16 (d) The tax credits allowed to the approved company shall be equal to the lesser
 17 of the total amount of the tax liability or the amount that the company may
 18 recover under paragraph (a) of this subsection that has not yet been recovered,
 19 reduced by any recovery through the collection of assessments and
 20 appropriations made under any appropriation agreement. The credit shall be
 21 allowed for each fiscal year of the approved company during the term of the
 22 agreement and for which a tax return of the approved company is filed until
 23 the amount that the company may recover under paragraph (a) of this
 24 subsection has been received through a combination of credits, assessments, if
 25 assessments are elected to be imposed, and appropriations made under any
 26 appropriation agreement. The approved company shall not be required to pay
 27 estimated tax payments as prescribed under KRS 141.044 or 141.305 on

1 income, Kentucky gross profits or Kentucky gross receipts from the economic
 2 revitalization project. Ninety (90) days after the filing of the tax return of the
 3 approved company, the Department of Revenue of the Commonwealth shall
 4 certify to the authority for the preceding fiscal year of an approved company
 5 for which a return was filed with respect to an economic revitalization project
 6 of the approved company the state tax liability of the approved company
 7 receiving inducements under KRS 154.26-015 to 154.26-100 and the amount
 8 of any tax credits taken pursuant to this section.

9 (e) The agreement shall provide that the term shall not be longer than the earlier
 10 of:

- 11 1. The date on which the approved company has received inducements or
 12 withheld assessments equal to the amount that the company may recover
 13 under paragraph (a) of this subsection; or
- 14 2. Ten (10) years from the date of the execution of the later of the
 15 agreement or supplemental project agreement~~[any longer term~~
 16 ~~negotiated as part of an amended agreement not to exceed an additional~~
 17 ~~ten (10) years, for a total maximum of twenty (20) years if a~~
 18 ~~supplemental project is approved]~~.

19 (f) Prior to execution of the agreement or supplemental project agreement, the
 20 eligible company shall secure from all local governmental authorities
 21 responsible for collecting local occupational license fees one (1) of the
 22 following:

- 23 1. A resolution or order of the local governmental entities acknowledging
 24 and consenting to the termination or partial termination of the receipt of
 25 local occupational license fees paid by the approved company on behalf
 26 of its employees to the local government entities resulting from the
 27 execution of the agreement or supplemental project agreement; or

1 2. In lieu of the credit against the local occupational license fee, an
2 appropriation agreement with the authority and the local governmental
3 entities by which the local governmental entities will appropriate funds
4 in an amount equal to the amount of the credit of the local occupational
5 license fee for the benefit of the approved company in a manner
6 consistent with the applicable state laws.

7 (g) If more than one (1) local occupational license fee is imposed upon the
8 employees of the approved company, the assessment imposed upon the
9 employees shall be credited against the local occupational license fee and shall
10 be apportioned to each local occupational license fee according to each local
11 occupational license fee's proportion to the total of all local occupational
12 license fees for such employees. No credit, or portion thereof shall be allowed
13 against any local occupational license fee imposed by or dedicated solely to a
14 local board of education.

15 (h) If in any fiscal year of the approved company during which the agreement *or*
16 *supplemental project agreement* is in effect the total of the tax credits granted
17 to the approved company plus the assessment collected from the wages of the
18 employees exceeds the expended portion of the amount that the approved
19 company may recover under paragraph (a) of this subsection, the approved
20 company shall pay the excess to the Commonwealth as income tax.

21 (i) If in any fiscal year of the approved company during which the agreement *or*
22 *supplemental project agreement* is in effect the assessment collected from the
23 wages of the employees exceeds the expended portion of the amount that the
24 approved company may recover under paragraph (a) of this subsection, the
25 assessment collected from the wages of the employees shall cease for the
26 remainder of that fiscal year of the approved company, the approved company
27 shall resume normal personal income tax and occupational license fee

withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(j) All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the ~~revitalization~~ agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the five (5) year period.

(2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, it shall not assess the wages of an employee who is party to an individual employment contract with the approved company.

(3) Neither the appropriation agreement, nor the agreement, nor the supplemental project agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

(4) In addition to the inducements permitted by this section, an approved company with a supplemental project agreement executed pursuant to this section may also qualify for the sales and use tax exemption established by Section 6 of this Act for its purchase and use of any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures as part of the approved supplemental project.

➔ Section 5. KRS 154.26-100 is amended to read as follows:

1 (1) The approved company may require that each employee subject to the income tax
2 imposed by KRS 141.020, whose job was preserved or created as a result of the
3 project or supplemental project, as a condition of employment or the retention of
4 employment, agree to pay an assessment, not to exceed, during any fiscal year of the
5 approved company, five percent (5%) of the gross wages of each employee subject
6 to the income tax imposed by KRS 141.020 whose job was retained or created as a
7 result of the project or supplemental project, unless:

8 (a) The appropriation agreement is consummated, in which case the assessment
9 shall be four percent (4%) of each employee's gross wages subject to the
10 income tax imposed by KRS 141.020;

11 (b) The local government or governments in which the project is located have a
12 local occupational license fee of less than one percent (1%) and agree to forgo
13 all of their local occupational license fee, in which case the assessment shall
14 equal four percent (4%) plus the percentage of the local occupational license
15 fee that the local government or governments have agreed to forgo; or

16 (c) The local government or governments in which the project is located have no
17 occupational license fee, in which case the assessment shall be four percent
18 (4%).

19 (2) Each assessed employee shall be entitled to a credit against his Kentucky income
20 tax required to be withheld under KRS 141.310 in the form of a simultaneous
21 adjustment equal to four-fifths (4/5) of the assessment, unless:

22 (a) The appropriation agreement is consummated, in which case the credit shall
23 be equal to one hundred percent (100%) of the assessment;

24 (b) The local government or governments in which the project or supplemental
25 project is located have a local occupational license fee of less than one percent
26 (1%) and agree to forgo all of their local occupational license fee, in which
27 case the credit shall be equal to the total assessment less the local occupational

- 1 license fee; or
- 2 (c) If the local government or governments in which the project or supplemental
- 3 project is located have no local occupational license fee, in which case the
- 4 credit shall be equal to one hundred percent (100%) of the assessment.
- 5 (3) Each assessed employee also shall be entitled to a credit against his local
- 6 occupational license fee in the form of a simultaneous adjustment of his local
- 7 occupational license fee withholding equal to one-fifth (1/5) of the assessment,
- 8 unless:
- 9 (a) The appropriation agreement is consummated; or
- 10 (b) The local occupational license fee is less than one percent (1%), in which case
- 11 the credit shall equal the same amount as the local occupational license fee.
- 12 (4) If an approved company shall elect to impose the assessment as a condition of
- 13 employment or the retention of employment, it shall deduct the assessment from
- 14 each paycheck of each employee subject to subsections (2) and (3) of this section.
- 15 (5) Any approved company collecting an assessment as provided in subsection (1) of
- 16 this section shall make its payroll books and records available to the authority at
- 17 such reasonable times as the authority shall request, and shall file with the authority
- 18 the documentation respecting the assessment the authority may require.
- 19 (6) Any assessment of the wages of the employees of an approved company pursuant to
- 20 subsection (1) of this section shall permanently lapse upon expiration or termination
- 21 of the agreement.
- 22 (7) By October 1 of each year, the Department of Revenue of the Commonwealth shall
- 23 certify to the authority, in the form of an annual report, aggregate tax credits
- 24 claimed on tax returns filed during the fiscal year ending June 30 of that year and
- 25 job revitalization assessment fees taken during the prior calendar year by approved
- 26 companies with respect to their economic revitalization projects and supplemental
- 27 projects under this subchapter, and shall certify to the authority, within ninety (90)

1 days from the date an approved company has filed its state tax return, when an
2 approved company has taken tax credits equal to its total inducements.

3 ➔Section 6. KRS 139.480 is amended to read as follows:

4 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at
5 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not
6 include the sale, use, storage, or other consumption of:

7 (1) Locomotives or rolling stock, including materials for the construction, repair, or
8 modification thereof, or fuel or supplies for the direct operation of locomotives and
9 trains, used or to be used in interstate commerce;

10 (2) Coal for the manufacture of electricity;

11 (3) All energy or energy-producing fuels used in the course of manufacturing,
12 processing, mining, or refining and any related distribution, transmission, and
13 transportation services for this energy that are billed to the user, to the extent that
14 the cost of the energy or energy-producing fuels used, and related distribution,
15 transmission, and transportation services for this energy that are billed to the user
16 exceed three percent (3%) of the cost of production. Cost of production shall be
17 computed on the basis of plant facilities which shall mean all permanent structures
18 affixed to real property at one (1) location;

19 (4) Livestock of a kind the products of which ordinarily constitute food for human
20 consumption, provided the sales are made for breeding or dairy purposes and by or
21 to a person regularly engaged in the business of farming;

22 (5) Poultry for use in breeding or egg production;

23 (6) Farm work stock for use in farming operations;

24 (7) Seeds, the products of which ordinarily constitute food for human consumption or
25 are to be sold in the regular course of business, and commercial fertilizer to be
26 applied on land, the products from which are to be used for food for human
27 consumption or are to be sold in the regular course of business; provided such sales

1 are made to farmers who are regularly engaged in the occupation of tilling and
 2 cultivating the soil for the production of crops as a business, or who are regularly
 3 engaged in the occupation of raising and feeding livestock or poultry or producing
 4 milk for sale; and provided further that tangible personal property so sold is to be
 5 used only by those persons designated above who are so purchasing;

6 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
 7 used in the production of crops as a business, or in the raising and feeding of
 8 livestock or poultry, the products of which ordinarily constitute food for human
 9 consumption;

10 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
 11 products of which ordinarily constitute food for human consumption;

12 (10) Machinery for new and expanded industry;

13 (11) Farm machinery. As used in this section, the term "farm machinery":

14 (a) Means machinery used exclusively and directly in the occupation of:

- 15 1. Tilling the soil for the production of crops as a business;
- 16 2. Raising and feeding livestock or poultry for sale; or
- 17 3. Producing milk for sale;

18 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
 19 replacement parts which are used or manufactured for use on, or in the
 20 operation of farm machinery and which are necessary to the operation of the
 21 machinery, and are customarily so used, including but not limited to combine
 22 header wagons, combine header trailers, or any other implements specifically
 23 designed and used to move or transport a combine head; and

24 (c) Does not include:

- 25 1. Automobiles;
- 26 2. Trucks;
- 27 3. Trailers, except combine header trailers; or

- 1 4. Truck-trailer combinations;
- 2 (12) Property which has been certified as a pollution control facility as defined in KRS
3 224.1-300, and all materials, supplies, and repair and replacement parts purchased
4 for use in the operation or maintenance of the facilities used specifically in the steel-
5 making process. The exemption provided in this subsection for materials, supplies,
6 and repair and replacement parts purchased for use in the operation of pollution
7 control facilities shall be effective for sales made through June 30, 1994;
- 8 (13) Tombstones and other memorial grave markers;
- 9 (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
10 or handling. The exemption applies to the equipment, machinery, attachments,
11 repair and replacement parts, and any materials incorporated into the construction,
12 renovation, or repair of the facilities;
- 13 (15) On-farm facilities used exclusively for raising poultry or livestock. The exemption
14 shall apply to the equipment, machinery, attachments, repair and replacement parts,
15 and any materials incorporated into the construction, renovation, or repair of the
16 facilities. The exemption shall apply but not be limited to vent board equipment,
17 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
18 and curtain systems. In addition, the exemption shall apply whether or not the seller
19 is under contract to deliver, assemble, and incorporate into real estate the
20 equipment, machinery, attachments, repair and replacement parts, and any materials
21 incorporated into the construction, renovation, or repair of the facilities;
- 22 (16) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
23 and directly to:
- 24 (a) Operate farm machinery as defined in subsection (11) of this section;
- 25 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
26 (14) of this section;
- 27 (c) Operate on-farm poultry or livestock facilities defined in subsection (15) of

- 1 this section;
- 2 (d) Operate on-farm ratite facilities defined in subsection (24) of this section;
- 3 (e) Operate on-farm llama or alpaca facilities as defined in subsection (26) of this
- 4 section; or
- 5 (f) Operate on-farm dairy facilities;
- 6 (17) Textbooks, including related workbooks and other course materials, purchased for
- 7 use in a course of study conducted by an institution which qualifies as a nonprofit
- 8 educational institution under KRS 139.495. The term "course materials" means only
- 9 those items specifically required of all students for a particular course but shall not
- 10 include notebooks, paper, pencils, calculators, tape recorders, or similar student
- 11 aids;
- 12 (18) Any property which has been certified as an alcohol production facility as defined in
- 13 KRS 247.910;
- 14 (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
- 15 direct operation of aircraft in interstate commerce and used exclusively for the
- 16 conveyance of property or passengers for hire. Nominal intrastate use shall not
- 17 subject the property to the taxes imposed by this chapter;
- 18 (20) Any property which has been certified as a fluidized bed energy production facility
- 19 as defined in KRS 211.390;
- 20 (21) Any property to be incorporated into the construction, rebuilding, modification, or
- 21 expansion of a blast furnace or any of its components or appurtenant equipment or
- 22 structures as part of an approved supplemental project, as defined by Section 2 of
- 23 this Act. The exemption provided in this subsection shall be effective for sales
- 24 made;
- 25 (a) On and after July 1, 2016; and
- 26 (b) During the term of a supplemental project agreement entered into pursuant
- 27 to Section 4 of this Act~~[through June 30, 1994];~~

- 1 (22) Beginning on October 1, 1986, food or food products purchased for human
2 consumption with food coupons issued by the United States Department of
3 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
4 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
5 continue participation in the federal food stamp program;
- 6 (23) Machinery or equipment purchased or leased by a business, industry, or
7 organization in order to collect, source separate, compress, bale, shred, or otherwise
8 handle waste materials if the machinery or equipment is primarily used for recycling
9 purposes;
- 10 (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
11 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
12 products, and the following items used in this agricultural pursuit:
- 13 (a) Feed and feed additives;
- 14 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 15 (c) On-farm facilities, including equipment, machinery, attachments, repair and
16 replacement parts, and any materials incorporated into the construction,
17 renovation, or repair of the facilities. The exemption shall apply to incubation
18 systems, egg processing equipment, waterer and feeding systems, brooding
19 systems, ventilation systems, alarm systems, and curtain systems. In addition,
20 the exemption shall apply whether or not the seller is under contract to deliver,
21 assemble, and incorporate into real estate the equipment, machinery,
22 attachments, repair and replacement parts, and any materials incorporated into
23 the construction, renovation, or repair of the facilities;
- 24 (25) Embryos and semen that are used in the reproduction of livestock, if the products of
25 these embryos and semen ordinarily constitute food for human consumption, and if
26 the sale is made to a person engaged in the business of farming;
- 27 (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for

1 the breeding and production of hides, breeding stock, fiber and wool products, meat,
 2 and llama and alpaca by-products, and the following items used in this pursuit:

3 (a) Feed and feed additives;
 4 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 5 and

6 (c) On-farm facilities, including equipment, machinery, attachments, repair and
 7 replacement parts, and any materials incorporated into the construction,
 8 renovation, or repair of the facilities. The exemption shall apply to waterer
 9 and feeding systems, ventilation systems, and alarm systems. In addition, the
 10 exemption shall apply whether or not the seller is under contract to deliver,
 11 assemble, and incorporate into real estate the equipment, machinery,
 12 attachments, repair and replacement parts, and any materials incorporated into
 13 the construction, renovation, or repair of the facilities;

14 (27) Baling twine and baling wire for the baling of hay and straw;

15 (28) Water sold to a person regularly engaged in the business of farming and used in the:

16 (a) Production of crops;
 17 (b) Production of milk for sale; or
 18 (c) Raising and feeding of:

19 1. Livestock or poultry, the products of which ordinarily constitute food for
 20 human consumption; or

21 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;

22 (29) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
 23 production of hides, breeding stock, meat, and buffalo by-products, and the
 24 following items used in this pursuit:

25 (a) Feed and feed additives;
 26 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 27 (c) On-farm facilities, including equipment, machinery, attachments, repair and

1 replacement parts, and any materials incorporated into the construction,
2 renovation, or repair of the facilities. The exemption shall apply to waterer
3 and feeding systems, ventilation systems, and alarm systems. In addition, the
4 exemption shall apply whether or not the seller is under contract to deliver,
5 assemble, and incorporate into real estate the equipment, machinery,
6 attachments, repair and replacement parts, and any materials incorporated into
7 the construction, renovation, or repair of the facilities;

8 (30) Aquatic organisms sold directly to or raised by a person regularly engaged in the
9 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
10 and the following items used in this pursuit:

11 (a) Feed and feed additives;

12 (b) Water;

13 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
14 and

15 (d) On-farm facilities, including equipment, machinery, attachments, repair and
16 replacement parts, and any materials incorporated into the construction,
17 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
18 petroleum gas, or natural gas used to operate the facilities. The exemption
19 shall apply, but not be limited to: waterer and feeding systems; ventilation,
20 aeration, and heating systems; processing and storage systems; production
21 systems such as ponds, tanks, and raceways; harvest and transport equipment
22 and systems; and alarm systems. In addition, the exemption shall apply
23 whether or not the seller is under contract to deliver, assemble, and
24 incorporate into real estate the equipment, machinery, attachments, repair and
25 replacement parts, and any materials incorporated into the construction,
26 renovation, or repair of the facilities;

27 (31) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the

1 production of hides, breeding stock, meat, and cervid by-products, and the
 2 following items used in this pursuit:

- 3 (a) Feed and feed additives;
- 4 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
- 5 (c) On-site facilities, including equipment, machinery, attachments, repair and
 6 replacement parts, and any materials incorporated into the construction,
 7 renovation, or repair of the facilities. In addition, the exemption shall apply
 8 whether or not the seller is under contract to deliver, assemble, and
 9 incorporate into real estate the equipment, machinery, attachments, repair and
 10 replacement parts, and any materials incorporated into the construction,
 11 renovation, or repair of the facilities;

12 (32) (a) Repair or replacement parts for the direct operation or maintenance of a motor
 13 vehicle, including any towed unit, used exclusively in interstate commerce for
 14 the conveyance of property or passengers for hire, provided the motor vehicle
 15 is licensed for use on the highway and its declared gross vehicle weight with
 16 any towed unit is forty-four thousand and one (44,001) pounds or greater.
 17 Nominal intrastate use shall not subject the property to the taxes imposed by
 18 this chapter;

19 (b) Repair or replacement parts for the direct operation and maintenance of a
 20 motor vehicle operating under a charter bus certificate issued by the
 21 Transportation Cabinet under KRS Chapter 281, or under similar authority
 22 granted by the United States Department of Transportation; and

23 (c) For the purposes of this subsection, "repair ~~or~~and replacement parts" means
 24 tires, brakes, engines, transmissions, drive trains, chassis, body parts, and their
 25 components. "Repair ~~or~~and replacement parts" shall not include fuel,
 26 machine oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not
 27 essential to the operation of the motor vehicle itself, except when sold as part

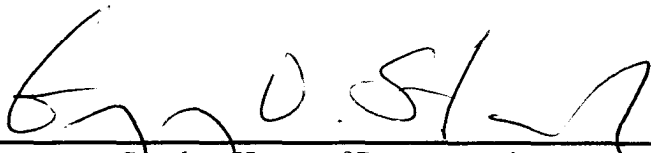
1 of the assembled unit, such as cigarette lighters, radios, lighting fixtures not
2 otherwise required by the manufacturer for operation of the vehicle, or tool or
3 utility boxes; and

4 (33) Food donated by a retail food establishment or any other entity regulated under KRS
5 217.127 to a nonprofit organization for distribution to the needy.

6 ➔Section 7. Section 6 of this Act takes effect August 1, 2014.



President of Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 4-25-14